

IN THE HIGH COURT OF PUNJAB AND HARYANA
AT CHANDIGARH

CRA-S-3141-SB-2010(O&M)

Reserved on:02.03.2023

Date of Pronouncement:03.03.2023

Gurjeet Singh

...Appellant

VS.

State of Punjab and others

...Respondents

Coram : Hon'ble Mr. Justice N.S.Shekhawat

Present : Mr. Sanjeev Manrai, Sr. Advocate with
Mr. Kushagar Goyal, Advocate
for the appellant.

Mr. M.S. Bajwa, Deputy Advocate General, Punjab.

Mr. Chanchal K. Singla, Advocate
for respondents No.2 to 6.

N.S.Shekhawat J.

The present appeal is directed against the judgment dated 17.03.2009, passed by learned Additional Sessions Judge, Barnala, whereby the respondents were ordered to be acquitted. The learned trial Court held that the prosecution had failed to establish the guilt of the accused, as per the demanding degree of proof and in view of the flaws pointed out by the defence, serious doubts were raised about the truthfulness of the prosecution case.

The brief facts of the prosecution are that the FIR in the instant case was got registered by Gurjeet Singh, injured. He stated that at about 9.00 p.m. on 02.08.2006, he was returning to his house from his fields and reached

near bus stand Thuliwal, at that time Karnail Singh S/o Randhir Singh, accused armed with a *gandasa*, Gurcharan Singh S/o Inder Singh, accused armed with *kulhari* (axe), Kala Singh S/o Nachhatar Singh, accused armed with 12 bore rifle, Makhan Singh S/o Gurdev Singh, accused armed with a *gandasi* and Kala Singh S/o Maghar Singh, accused armed with a *gandasi*, all residents of village Thuliwal alongwith two unknown persons came and encircled the complainant. Gurcharan Singh, accused gave a blow with *kulhari* (axe) on the right side of his head, whereas, Karnail Singh also gave a blow in the middle of his head with a *gandasi*. Makhan Singh, accused had given a blow on the left hand near his thumb with a *gandasi* and on this, Gurjeet Singh injured had fallen on the ground and had raised the alarm to save him. Several persons had collected there. The accused exhorted that they would see Sammi also and had fled from the spot. When he reached hospital, he (complainant) came to know that the aforesaid assailants had also gone to the house of Sammi and caused injuries to his wife Sukhvinder Kaur also. The complainant was shifted to the hospital and he was under treatment for the injuries suffered by him in the said occurrence. He further stated that the motive of occurrence was that there was factionalism in the village between the supporters of the Congress and Akali party and due to this, the assailants had caused injuries to them.

The investigation was conducted by the police and all the accused were arrested by the police except Makhan Singh, who was found innocent. After presentation of challan, the case was committed to the Court of Sessions by the learned Illaqa Magistrate. After hearing both the sides, learned trial Court came to the conclusion that *prima facie* a case under Sections 148, 308, 452, 506 of IPC was made out against the accused and they were charge-sheeted

accordingly. The accused pleaded not guilty to the said charge and claimed trial.

In order to establish the guilt of the accused, the learned trial Court examined five witnesses. The prosecution examined Dr. Rajinder Kumar, Medical Officer, CHC, Chananwal and found the following injuries on the person of Kuldeep Singh, aged 28 years, complainant:-

1. *Bleeding lacerated wound 6 cm x 1 cm x muscle deep over scalp AP and Direction 12 cm from the centre of eye brows and 1 cm right to mid-line.*
2. *Bleeding lacerated wound 3 cm x ½ cm x skin deep over scalp, 4 cm right from mid-line and 5 cm from occipital protuberance.*
3. *Bleeding lacerated wound 3 cm x ½ cm x skin deep over inter pharyngeal space between thumb and index finger of left hand.*

As per the doctor, the kind of weapon used for all the injuries was blunt and proved the copy of the MLR as Ex.PA and pictorial diagrams showing the seat of injuries as Ex.PA/1. He further opined that injury No.1 and 2 on the person of Gurjeet Singh were simple in nature. He also rendered his opinion Ex.PB/1, on the application moved by the police. He further examined Sukhvinder Kaur, another injured and found the following injuries:-

1. *Bleeding lacerated wound 2 ½ cm x 1 ½ cm x skin deep over lateral aspect of left fore-arm. 10 cm above the wrist joint.*
2. *Red abrasion, 1 cm x 2 mm, one cm above injury No.1.*

Again, he proved the MLR as Ex.PC and the pictorial diagrams as Ex.PC/1. He declared injury No.1 on the person of Sukhvinder Kaur to be simple. In cross-examination, the said doctor admitted that the kind of weapon

mentioned for the injuries to Sukhvinder Kaur and Gurjeet Singh were blunt. He admitted that in Ex.PE, there was mention of Sukhvinder Kaur, only. In his report, he had given opinion qua persons more than one. The injuries in question were not likely to cause death of the injured. He orally could not state the reason for the opinion that the injured were unfit for statement. The patient may be unfit due to shock of injuries or due to effect of medicines. However, in the present case, the patient was unfit to make the statement due to both the above-stated reasons. He further admitted that none of the injuries was caused with a sharp weapon. The prosecution further examined PW-2 Gurjeet Singh, S/o Nahar Singh, injured and he supported the case of the prosecution in totality. However in cross-examination, he admitted that several persons had collected at the spot, but he did not remember the names of those persons. Further, blow from the *kulhari* (axe) was given from the sharp side. He further admitted that the blade of *kulhari* (axe) was 15-16 inches in length and was sharp. Even the *gandasa* blows were given on the person of complainant with sharp side of *gandasa*. He further admitted that he had shown the place of occurrence to the police. He further admitted that no intimation was given to the Police Station, Sadar, while proceeding to the hospital. He was shifted in the jeep driven by his brother. Blood had also smeared on the clothes of his brother during the process of shifting, but he had not given the same to the police. He further denied that the present occurrence had taken place as a counter blast to FIR No.133, dated 5.05.2006, under Sections 341, 323, 506, 148, 149 of IPC.

The prosecution further examined PW-3 Sukhvinder Kaur, who also supported the case of the prosecution. She stated that Sajjan Singh was his

father-in-law and was residing in the same house with her. She further stated that Gurjeet Singh was caused injuries by the accused. She further admitted that her husband Parminder Singh was facing trial in case bearing FIR No.133, dated 05.05.2006, under Sections 341, 323, 506, 148, 149 Police Station Barnala, on account of causing injuries to Mukhtiar Kaur. She also admitted that the blood had oozed from her injuries and her clothes were stained with blood. However, the blood stained clothes were not handed over to the police. She did not get unconscious after the occurrence or in the hospital. The police had not met her on the date of occurrence. The prosecution further examined PW-4 ASI Sampuran Singh, who had effected the arrest of the accused in the instant case. The prosecution further examined PW-5 HC Balbir Singh, who was part of the investigating team.

After closure of the prosecution evidence, the statements of the accused were recorded under Section 313 Cr.P.C. and almost similar stands have been taken by them. It has been stated that a criminal case was registered against Kartar Singh etc. vide FIR No.133 dated 05.05.2006 under Sections 341, 323, 506, 148, 149, Police Station Barnala and the present case was got registered by the complainant side, just to falsely involved them in a criminal case. Similar stands have been taken by almost every accused under Section 313 Cr.P.C.

The accused examined two witnesses to prove his defence and tendered the documents Ex.DF and Ex.DG. The accused examined DW-1 HC Gurjant Singh, who had brought the record pertaining to DDR No.6, dated 06.08.2006. The defence further examined and also brought the record relating to *roznamacha* prepared by P.S. Sadar, Barnala and proved the entries.

However, he stated that he had no personal knowledge regarding the documents produced by him on that day.

I have heard learned counsel for the parties and with their able assistance, I have gone through the trial Court record carefully.

Learned counsel for the appellant vehemently argued that the testimonies of both the injured witnesses i.e. PW-2 Gurjeet Singh and PW-3 Sukhvinder Kaur had not been appreciated in the correct prospective by the learned trial Court. In fact, both the witnesses had supported the case of the prosecution and had attributed specific injuries to all the respondents/accused. Even the ocular version was duly supported by the testimony of PW-1 Dr. Rajinder Kumar, Medical Officer, who had proved on record the MLRs of both the injured. He further prayed for reversal of the findings recorded by the learned trial Court in this regard. However, the said submissions have been opposed by the learned counsel for the respondents and by contending that the learned trial Court had recorded detailed findings in this regard and rightly did not relying upon the testimonies of PW-2 Gurjeet Singh and PW-3 Sukhvinder Kaur.

I have considered the rival submissions made by learned counsel for the parties and the findings recorded by the learned trial Court in this regard. In fact, the learned trial Court has rightly held that the medical evidence is at variance with the ocular version. Still further, PW-2, Gurjeet Singh as well as PW-3, Sukhvinder Kaur had stated that the injuries were caused on the persons of both the injured with *gandasis*. Even PW-2 Gurjeet Singh clearly stated that Gurcharan Singh gave a blow with *kulhari* on the right side of his head, whereas, Karnail Singh gave a *gandasa* blow on his head in the middle and

Makhan Singh gave a *gandasa* blow on the thumb of his left hand. He further stated that the blows from *kulhari* were given from the sharp side of the weapon. He further stated that the blade of *kulhari* (axe) was 15-16 inches in length and was sharp. Even *gandasa* blows were given to him from the sharp side. However from a perusal of the injuries suffered by PW-2 Gurjeet Singh, it is apparent that none of the injuries were caused with a sharp edged weapon. Rather, PW-1 Dr. Rajinder Kumar specifically pointed out that the weapon used for causing all the injuries was blunt. He had further opined that injuries No.1 and 2 on the person on Gurjeet Singh were simple in nature. Still further, it was alleged that the assailants i.e. Kala S/o Nachhattar Singh, accused was also carrying a 12 bore gun and the accused had allegedly the intention to cause death of the injured. However, surprisingly no fire was shot from any fire arm. Similarly, PW-3 Sukhvinder Kaur also alleged that she was also caused blows with a *gandasa*, however, she tried to improve her version by stating that blow was given from the reverse side of the *gandasa*. Even she stated that the injury was caused by Gurcharan Singh, accused from the reverse side of the axe on her left arm. However, it is apparent that the said version was improved as none of the injuries suffered by Sukhvinder Kaur was with a sharp edged weapon. Even injuries suffered by both the injured were simple in nature, still they were ordered to be charged under Section 308 of IPC.

Apart from that, the learned trial Court had rightly recorded that apart from the two injured Gurjeet Singh and Sukhvinder Kaur, one more person had received the injuries in the said occurrence. Even PW-1 Dr. Rajinder Kumar proved the application, which was moved about the fitness of one person, namely Balwant Singh S/o Maghar Singh, besides Gurjeet Singh

and Sukhvinder Kaur. Even PW-1 Dr. Rajinder Kumar clearly stated that another application Ex.PH was filed by ASI Devinder Singh to obtain the opinion recording the fitness of Balwant Singh S/o Maghar Singh and vide his opinion Ex.PH/1, Balwant Singh S/o Maghar Singh was declared fit to make the statement at 10.00 am. Even PW-5, HC Balbir Singh had also admitted the factum of moving an application with regard to fitness of Balwant Singh and proved the said application. However, the record reveals that the prosecution case is totally silent with regard to presence of Balwant Singh S/o Maghar Singh and it is apparent that the prosecution had concealed the genesis of the occurrence. Learned trial Court has rightly recorded the findings that the material piece of evidence had been suppressed by the prosecution and the prosecution have not been able to come clean about the true happening. Thus, the findings recorded by the learned trial Court in this regard are upheld.

Apart from that, in the present case, the defence had taken a specific stand that the present case was counter blast to FIR No.133, dated 5.05.2006, under Sections 341, 323, 506, 148, 149 of IPC, Police Station Barnala, on account of injuries caused to Mukhtiar Kaur. In the said case, Parminder Singh, husband of Sukhvinder Kaur, PW-3/injured was facing trial and Kala Singh S/o Nachhattar Singh, respondent/accused was an eyewitness of the aforesaid case. Thus, a specific plea was raised and proved by the defence with regard to the fact that the present case was counter blast to the said FIR. In such a situation, it was obligatory on the part of the prosecution to examine ASI Devinder Singh, who had conducted the investigation in the present case. However, the prosecution did not offer ASI Devinder Singh as a witness and the defence was deprived of its valuable right of cross-examining the most material

witness i.e. the investigating officer of the present case and a serious prejudice have been caused to the case of defence in this regard.

Apart from that, there were apparently serious flaws in the case of the prosecution, which have been pointed out by the learned trial Court in the impugned judgment. Even PW-2 Gurjeet Singh clearly stated that blood had present on the clothes of his brother during the process of shifting to the hospital. However, the clothes of his brother were not given to the police. Still further, he admitted that several persons had collected at the spot but he did not remember their names. The occurrence had taken place in a thickly populated area, however, no independent witness was examined by the prosecution to lend credence to the case of the prosecution. Apart from that, PW-2 Gurjeet Singh also admitted that he had shown the spot of occurrence to the police on 02.08.2006 itself. However, the police recorded the FIR on 03.08.2006, which clearly shows that even prior to registration of the FIR, the facts were disclosed to the police by the complainant i.e. PW-2 Gurjeet Singh and even the spot was inspected by the police much prior to the registration of the FIR. However, the police has shown the delay in lodging of the FIR on the ground that the injured were unfit for making the statement and the statement could not be recorded in time. Apart from that, several other flaws have been mentioned by the learned trial Court in the prosecution case and the findings are liable to be upheld.

I have also carefully gone through the findings recorded by the learned trial Court and the learned trial Court has recorded valid reasons for recording the judgment of acquittal and the impugned judgment is based on correct appreciation of evidence and law.

Still further, the parameters have been laid down by this Court and the Hon'ble Supreme Court in entertaining the appeal against the order of acquittal in catena of judgments. It has been held in the matter of ***“Mahadeo Laxaman Sarane and another Vs. State of Maharashtra”, 2007 (3) RCR (Criminal) 2010***, by the Hon'ble Supreme Court that in an appeal against acquittal, the High Court ought not to interfere in the order of acquittal if on the basis of same evidence two views are reasonably possible – one in favour of the accused and other against him. In such a case, if the trial Court takes a view in favour of the accused, the High Court ought not to interfere with the order of acquittal.

Even otherwise, I have gone through the judgment passed by the learned trial Court and I find that valid reasons have been recorded by the learned trial Court while recording the judgment of acquittal. Consequently, the appeal is meritless and is liable to be dismissed by this Court. The impugned judgment dated 17.03.2009 passed by learned Additional Sessions Judge, Barnala is affirmed and the appeal is dismissed.

Pending applications, if any, are also disposed off, accordingly.

Case property, if any, be dealt with, and destroyed after the expiry of period of limitation for filing the appeal, in accordance with law. The trial Court record be sent back.

03.03.2023
hemlata

(N.S.SHEKHAWAT)
JUDGE

Whether speaking/reasoned	:	Yes/No
Whether reportable	:	Yes/No